IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 652 of 2002
in
SPECIAL CIVIL APPLICATIONNo 10251 of 2001
with
CIVIL APPLICATION NO. 8991 OF 2002

For Approval and Signature:

Hon'ble MR.JUSTICE KSHITIJ R.VYAS
and
Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgement? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GUJARAT ELECTRICITY BOARD (G. E. B.)
Versus
GIRISHBHAI VALJIBHAI CHUDGAR

Appearance:
MR SP HASURKAR for Appellant/applicant
MRS VASAVDATTA BHATT for Respondent No. 1

CORAM : MR.JUSTICE KSHITIJ R.VYAS
and
MR.JUSTICE M.S.SHAH

Date of decision: 02/07/2003

COMMON ORAL JUDGEMENT

(Per : MR.JUSTICE KSHITIJ R.VYAS)

The appellant - Gujarat Electricity Board, has filed this Letters Patent Appeal under Clause 15 of the Letters Patent, challenging the judgment and order dated 9th April 2002 rendered in Special Civil Application No. 10251 of 2001 by the learned Single Judge. The learned Single Judge, by the impugned judgment, allowed the petition filed by the present respondent, by setting aside the award passed by the Labour Court in Reference No. 9 of 1995, dated 23rd July 1001 and directed the appellant Board to reinstate the respondent workman in service on his original position with continuity of service without any backwages of the interim period within period of one month from the date of receipt of the certified copy of the order.

2. The respondent workman was appointed as a Helper with the appellant Board on probation for a period of six months on 6.9.1993. He joined the duty on 13.9.1993. It is the case of the appellant Board that the respondent remained absent from June 1994 upto November 1994 and therefore, by exercising powers under Regulation 113 of the Guajrat State Electricity Board Service Regulations (in short, 'Service Regulation'), the respondent workman was dismissed from service. The said order was passed on 16th November 1994. The respondent approached the Labour Court, at Surendranagar, by way of reference being Reference No.9 of 1995. The Labour Court rejected the said Reference by its order dated 23rd July 2001. The respondent challenged the said order by filing petition being Special Civil Application No. 10251 of 2001. As stated above, the said petition was allowed by the learned Single Judge. Hence the present Letters Patent Appeal.

3. Learned Counsel Mr.Hasurkar for the appellant Board submits that the Board exercised the powers under Service Regulation 113 in dismissing the respondent from service with effect from 4th June 1994 which is legal and valid. Learned Counsel submits that the respondent remained continuously absent from his duty or overstayed in spite of the warning to return to duty and since no reply has been given by the respondent nor reported for duty, the Board was justified in order of dismissal by resorting to Regulation 113.

4. Service Regulation 113 reads as under:

"113. The continued absence from duty or overstay, inspite of warning to return to duty

shall render the employee liable to be summarily discharged from service without the necessity of proceedings under the Gujarat Electricity Board Conduct, Discipline and Appeal Procedure."

The Apex Court had an occasion to consider the said Regulation in a reported decision rendered in the case of Gujarat Electricity Board and anr. v. Atmaram Sungomal Poshani [1989 (II) LLJ SC 470]. In paragraph 5 of the said decision, the Apex Court has observed as under:

"....The above Rule provides that if an employee of the Gujarat Electricity Board continues to remain absent from duty or overstays the period of sanctioned leave and inspite of warning he fails to return to duty, he renders himself liable to be discharged summarily from service without complying with the procedure prescribed for taking disciplinary action under the Gujarat Electricity Board Conduct, Discipline and Appeal Procedure. Regulation 113 confers wide powers on the authorities to summarily discharge an employee from service, if he continues to be absent from duty in an unauthorised manner and refuses to join his duty even after warning. Under the disciplinary rules detailed procedure is required to be followed for removing an employee from service but Regulation 113 provides for summary discharge from service. Before this power is exercised, two conditions must be satisfied: Firstly, the employee must be found to be absent from duty without leave or overstaying the period of sanctioned leave, and secondly, he failed to join his duty even after a warning. The object and purpose of giving warning is to remind the delinquent employee that if he continues to be absent from duty he would be liable to action under Regulation 113 and to afford him an opportunity to make amends by joining his duty. If even thereafter he fails to join duty, his services are liable to be terminated by an order of discharge....."

5. On reading the aforesaid observations, it is clear that if the employee of the Board continues to remain absent from duty or overstays the period of sanctioned leave and inspite of warning, he fails to return to duty, he renders himself liable to be discharged summarily from service without complying with the procedure prescribed for taking disciplinary action under the Gujarat Electricity Board Conduct, Discipline

and Appeal Procedure. Thus, Regulation 113 confers wide powers on the authorities to summarily discharge an employee from service.

6. As far as the case on hand is concerned, the appellant Board dismissed the respondent for alleged misconduct of remaining absent, by passing the order dated 16.11.1994 and that too, by resorting to Service Regulation 113. The procedure adopted by the appellant Board in passing the order of dismissal is not proper as Service Regulation 113 authorises the Board to pass the order of discharge against an employee who remains absent from duty or overstays the period of sanctioned leave. On perusing the impugned order dated 16.11.1994, it is clear that the Superintending Engineer, after referring to various notices issued to the respondent and while and resorting to Service Regulation 113, dismissed the respondent with effect from 4th June 1994. Not only that, he has also blacklisted the respondent and has also directed not to provide him employment in any of the office connected with the appellant Board. Once the order of dismissal is passed and that too, without following the principles of natural justice, this Court will have no option but to hold that the impugned order is illegal and in violation of the principles of natural justice. In this view of the matter, we are of the opinion that the learned Single Judge was justified in allowing the petition filed by the respondent.

7. In the result, we dismiss this appeal by confirming the judgment and order passed by the learned Single Judge. There shall be no order as to costs.

8. Needless to mention that it will be open for the appellant Board to initiate proceedings afresh against the respondent workman and to pass orders in accordance with law. We may, however, clarify that before initiating any fresh proceedings, the appellant shall first comply with the order passed by the learned Single Judge and shall pay the salary to the respondent from the date of the order of the learned Single Judge till he is reinstated.

9. In view of the above order passed in the main appeal, the Civil Application for stay does not survive and is rejected. Rule is discharged.

(Kshitij R. Vyas, J.)

(M.S. Shah, J.)
Sreeram.